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In re Application of :
TEMSAMANI, Jamal, et al. :
Application No.: 09/856,940 :
PCT No.: PCT/FR99/02939 :
Int. Filing Date: 26 November 1999 :
Priority Date: 30 November 1998 :
Attorney Docket No.: 19904-013NATL :
For: PHARMACEUTICAL :
COMPOSITION COMPRISING AN :
ANTI-CANCER AGENT AND AT :
LEAST A PEPTIDE :

DECISION ON

PETITION UNDER

37 CFR 1.47(a)

This is a decision on applicants' "Renewed Petition Under 37 CFR 1.47(a)," filed in the United States Patent and Trademark Office (USPTO) on 22 February 2002.

BACKGROUND

On 26 November 1999, applicants filed international application PCT/FR99/02939, which claimed a priority date of 30 November 1998. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 08 June 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 30 June 2000, within nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 30 May 2001.

On 30 May 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 10 July 2001, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required. The NOTIFICATION set a two-month extendable period for reply.

On 06 December 2001, applicants submitted the petition under 37 CFR 1.47, which was accompanied by, *inter alia*, a petition for a three-month extension of time; the fee for a three-month extension of time; and a combined declaration and power of attorney executed by inventors Jamal Temsamani and Michel Kaczorek.

On 30 January 2002, the Office mailed Decision on Petition Under 37 CFR 1.47(a) dismissing the petition without prejudice.

On 22 February 2002, applicants filed "Renewed Petition Under 37 CFR 1.47(a)," accompanied by, *inter alia*, a statement of facts and copies of postal receipts and letters with translations.

On 28 March 2002, the Office mailed Decision on Petition Under 37 CFR 1.47(a) dismissing the petition without prejudice.

On 28 May 2002, applicants filed "Second Renewed Petition Under 37 CFR 1.47(a)," accompanied by, *inter alia*, a statement of facts, a copy of a postal receipt, printouts of internet searches and a letter to Annick Colin de Verdier with translation.

DISCUSSION

A petition under 37 CFR 1.47 must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) proof of pertinent facts, namely that the inventor refuses to sign or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, and (4) an oath or declaration by the 37 CFR 1.47(a) applicant on behalf of himself or herself and the nonsigning applicant.

Applicants previously satisfied items (1), (3) and (4).

It is unclear whether applicants are arguing that Ms. Colin de Verdier could not be located after a diligent effort or that she has refused to execute the declaration after being supplied a complete copy of the application papers.

Under 37 CFR 1.47(a), the petition must supply proof of pertinent facts. The second renewed petition argues that inventor Colin de Verdier could not be located, however, applicants do not indicate that the letter sent to her last known address was returned as undeliverable. Applicants have supplied neither the signature portion of the postal receipt nor a translation of the postal receipt. Additionally, in the 22 February 2002 petition, applicants argued that Ms. Colin de Verdier had refused to sign the declaration. Applicants stated that the signature on the postal receipt was that of Annick Colin de Verdier.

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is **DISMISSED**, without prejudice.


If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file the proper response will result in abandonment of this application. Any reconsideration request should

include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of this letter marked to the attention of the Office of PCT Legal Administration.



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